IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 415 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHVIN NATUBHAI GADHVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 415 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MRS HB PUNANI, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/03/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 14-11-2001 passed by the

District Magistrate, Bhavnagar Dist. Bhavnagar, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. She has mainly argued that the detaining authority has relied upon four prohibition cases registered against the petitioner, one at Nageshri Police Station and the three at Bhavnagar `A' Division Police Station in passing the order of detention. She has further contended that statement of co-witnesses were recorded on 11-10-2001 and verified on 12-11-2001. She has further contended that last offence registered against the petitioner was dated 27-8-2001 at Bhavnagar `A' Division Police Station being Prohi. C.R.No.522 of 2001 whereas order of detention has been passed on 14-11-2001 and hence, there is a delay in passing the detention order. In this connection, she has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that last offence registered against the petitioner was dated 27-8-2001 and order of detention was passed on 14-11-2001 based on this offence and hence, there is a delay in passing the order. It is to be noted that said delay has not been satisfactorily explained by the authority. Therefore, in view of the aforesaid

judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 14-11-2001 passed against the detenu is hereby quashed and set aside. The detenu Ashvin Natubhai Gadhvi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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